



State of Connecticut

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Testimony of Michael K. Courtney, Acting Chief Capital Defense & Trial Services Unit

Raised Bill 5429, AN ACT PROHIBITING DISCLOSURE OF THE IDENTITIES OF PERSONS APPOINTED TO ADMINISTER THE DEATH PENALTY.

Judiciary Committee Public Hearing – March 16, 2012

The Office of Chief Public Defender is opposed to the proposed new language contained in Section 1 (c) of this Raised Bill which would amend C.G.S. 54-100. The new language proposed in this subsection could be interpreted to shield any person having any role during either the 2005 execution of Michael Ross, or any future scheduled execution, from public scrutiny as to whether they were actually qualified to take part in such an event.

In 1999, the legislature added §1-210(b)(18), along with C.G.S. §§1-210(c) and 1-212(f) to the Freedom of Information Statutes, via *Public Act No. 99-156, an Act Exempting Certain Department of Correction Records from Disclosure under the Freedom of Information Act*. This Public Act curtailed Freedom of Information (FOI) public access to information that the Department of Correction (DOC) viewed as security-sensitive, i.e., information that could threaten the safety of inmates, staff, and the general public by facilitating disturbances at or escapes from correctional institutions. This amendment gave the DOC the right to withhold security sensitive information from anyone upon a demonstration that the material is in fact security sensitive, while allowing the Freedom of Information Commission (FOIC) oversight and further allowing the DOC to appeal any adverse decision. The DOC has used this provision to deny access to a myriad of information relating to the DOC's execution procedures. See *Michael K. Courtney, et al vs. Commissioner, Docket #FIC 2007-451, Final Decision dated August 13, 2008*.

As a result of these safeguards that are already in place, there is no need for this special legislation aimed at protecting the DOC from any examination of either the Ross execution or any other which may occur in the future. The people of Connecticut have a right to know how the state's first execution in some forty odd years was conducted, and whether the procedures utilized were consistent with state and federal constitutional protections.

Based on his own admission to the Associated Press, Alan Doerhoff, a doctor who at one point traveled the country as an execution contractor, participated in the execution of Michael Ross. Doerhoff was later banned by a federal judge in Missouri from participating in any Missouri executions because of his incompetence. This legislation might shelter him from any examination of the role he played. In fact, an examination of the autopsy report of Michael Ross shows that the executioner(s) required five separate attempts to establish just two intravenous lines.¹

The legislature has already granted the D.O.C. significant exemptions from the disclosure obligations compared to those placed upon every other state agency. If the D.O.C. can demonstrate that these materials will somehow impact on the overall security of any state correctional facility, then surely no court will order it disclosed. This bill, as drafted, allows the D.O.C. complete discretion to refuse to disclose identifying information about an unlimited number of people and personnel that the D.O.C. decides are "perform(ing) the duty of executing sentences ... of ... death".

If, however, this committee were inclined to support this legislation, the Office of Chief Public Defender requests that, at a minimum, the phrase "except upon order of a court of competent jurisdiction under any restrictions imposed by such court" be inserted at the end of section (c). Otherwise, this Office requests that this bill not be voted out of Committee.

¹ There are dozens of examples of documented botched executions in the post Furman era, see <http://www.law.berkeley.edu/clinics/dpclinic/lethalinjectionICI/documents/kit/botched.pdf> last visited 3/6/12. Many of these botched executions were the result of incompetent or poorly trained executioners.